



September 24, 2019

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
601 D Street NW  
Washington, D.C. 20004  
Re: DOJ No. 90-5-1-1-10157

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RE: Civil Action No. 1:15-cv-00291-WWC: High Priority Combined Sewer Interceptor Improvements – Formal Notification of Delay Due to Force Majeure Events

To Plaintiffs, Civil Action No. 1:15-cv-00291-WWC:

Pursuant to Paragraph 65 of the Partial Consent Decree, CRW has determined that events arising from causes outside its control will delay its performance of the priority remedial work to the Front Street interceptor, currently scheduled to be completed by December 31, 2020 under Paragraph 31(a)(iii) of the Partial Consent Decree, as amended by the Joint Stipulation Regarding Modification. CRW believes that this delay is caused by Force Majeure events as defined in Paragraph 63 of the Partial Consent Decree.

In addition, as you previously have been made aware, CRW has suffered delays in completion of priority remedial work on the Paxton Creek Interceptor. We would like to discuss a non-material modification of the dates for completion of both the Front Street Interceptor project and the Paxton Creek project under Paragraph 99 of the Partial Consent Decree.

### **Program Summary**

Capital Region Water (CRW) is required to perform all identified priority remedial work on the interceptors and complete all construction activities per Paragraph V(G)(31)(a) of the partial Consent Decree (as revised in *Joint Stipulation Regarding Modification*, dated May 22<sup>nd</sup>, 2015):



a. High Priority Combined Sewer Interceptor Improvements. CRW shall perform a comprehensive assessment of the structural integrity of the Front Street Interceptor, the Paxton Creek Interceptor, the Asylum Run Interceptor, and the Spring Creek Interceptor by October 31, 2014. Based on the finding of the assessment, CRW shall identify all priority remedial work in those interceptors and develop a construction schedule to submit to Plaintiffs for review and approval pursuant to Section VI (Review and Approval of Deliverables) by March 1, 2015. All priority remedial work under the construction schedule proposed shall be completed by the following dates:

- i. on Paxton Creek Interceptor, by December 31, 2017;
- ii. on the Asylum Run Interceptor, by December 31, 2018; and
- iii. on the Front Street Interceptor, by December 31, 2020.

This is a summary being submitted to notify USEPA/PADEP on the current status of the priority remedial work under the Sewer Interceptor Improvements program. Based on updated assessment information and additional constraints on rehabilitation methods identified during construction, CRW is facing issues that will prevent us from performing all the priority remedial work prior to December 31, 2020. The detailed explanation and description below outline the reasons for delay.

### **Overview and Background**

CRW performed the initial assessment and identified all priority remedial work for the Sewer Interceptor System provided in the letter *RE: High Priority Combined Sewer Interceptor Improvements (DOJ No. 5-1-1-10157)*, dated February 26<sup>th</sup>, 2015. Per the requirements of the Partial Consent Decree, the letter outlined the priority remedial work construction schedule, noting that Paxton Creek and Asylum Run were highest priority and needed to be completed first. The reprioritization of Paxton Creek and Asylum Run Interceptor affected the initial completion date of July 1, 2019 for remedial work on the Front Street Interceptor. This letter resulted in the *Joint Stipulation Regarding Modification* and memorialized a portion of the construction schedule outlined in the letter.

In a letter *RE: Civil Action No. 1:15-CV-00291-WWC: Paxton Creek Interceptor Rehabilitation Schedule Impacts/Delays*, dated July 7, 2017, CRW provided an update to the first phase of interceptor rehabilitation work (Paxton Creek Interceptor), but also noted the status of Asylum Run and Front Street Interceptors. This letter is a follow up to the previous letter and further expands on CRW concern for schedule impacts and delay.

### **Status Summary**

Please review the status of each interceptor in our multi-year interceptor system rehabilitation program:



#### Asylum Run Interceptor –

Based on the findings of the initial assessment, the Asylum Run Interceptor remedial work was designed in 2017, bid in the first quarter of 2018, and finalized construction in December 2018. CRW has completed the Asylum Run Interceptor by the date noted in the Partial Consent Decree.

#### Paxton Creek Interceptor –

As noted in the July 7, 2017 letter, following the completion of intensive cleaning of CRW's interceptor system, it was discovered that a substantial number of pipe defects had been obscured from view by sediment deposition during the initial assessment in 2014. The 2014 assessment by RedZone Robotics formed the basis of the project limits and Partial Consent Decree work schedule.

In a technical memorandum, dated May 3, 2017, CDM Smith detailed the additional findings and revised post-cleaning recommendations. In short, the Paxton Creek Interceptor (PCI) rehabilitation length was increased by 46%, and the estimated construction cost was increased from \$3.7MM to over \$12MM. CRW advertised the project for construction, awarded the project in August of 2017, and construction started. In mid-2018, the contractor encountered severe infiltration in the existing pipe requiring weeks of grouting work before the pipe could accept the geopolymer lining. Progress was extremely slow and costly. Actual construction costs were approximately \$2,000 per linear foot, roughly three times more than expected. In December 2018, at CRW's direction, work stopped on the current PCI Rehabilitation Project with only about 10% of the identified pipe complete.

The centrifugally cast cementitious polymer mortar lining (CCCPL) method of installation requires the removal of all active infiltration in the pipe to ensure proper curing of the CCCPL material. To minimize the delay, CRW is in the process of developing a new design approach to complete the reconstruction of the PCI through an evaluation of the current known conditions and available technologies. Using the information gathered during the previous project, CRW has engaged consulting engineers to evaluate an appropriate rehabilitation method for the remainder of the PCI that will not be affected by the significant infiltration present in the pipe. Based on the new evaluation, supported by additional preliminary screening and investigation work, CRW will have a recommended approach in November 2019. Design of the PCI project is planned for 2020 with construction to occur in 2021 and 2022.

#### Front Street Interceptor (FSI) –

Phase I: Based on the findings of the initial assessment, FSI Phase I (approximately 1,900 LF of 30-inch circular reinforced concrete pipe) remedial work was designed in 2017, bid and awarded in the first quarter of 2018. Construction did not start until late September of 2018 due to coordination with spring/summer activities in Riverfront Park. Then, in the initial phases of construction, the contractor uncovered unidentified utility conflicts that made the work more difficult to complete. This created contractual challenges, including unacceptable price escalations that would have violated state procurement regulations, that CRW and the contractor could not resolve, and the



contract was terminated in February 2019. CRW reissued this work and construction is currently underway. The construction is to be complete by December 31, 2019.

Phase II: Based on the findings of the initial assessment, FSI Phase II included approximately 11,000 LF of pipe rehabilitation. CRW added 3,600 LF in the middle of the Phase II project to provide continuity and rehabilitation of the entire stretch of pipe. This total length of pipe rehabilitation will be approximately 14,400 LF. The design of this work began in August/September of 2018 and is currently ongoing. Due to the similar age and construction method of FSI to the Paxton Creek Interceptor, CRW is concerned we will encounter the same severe infiltration issues. In an effort to minimize delay we have included this phase of the work in the evaluation of alternative rehabilitation methodologies with the PCI evaluation.

The originally proposed rehabilitation method for the cast in place concrete FSI was CIPP lining. During the PCI Project (also cast in place concrete) the pipe was bypassed, and significant invert defects and infiltration were discovered. Infiltration can cause significant challenges during construction for several of the typically recommended rehabilitation methods. Previous inspections of the FSI were performed with the pipe in service, so the invert was not seen. In November 2019 CRW plans to utilize a specialty contractor to temporarily take a section of the FSI out of service and perform CCTV inspections. The inspections will allow CRW to determine the true condition of the pipe, including the invert and the extent of infiltration. Following the inspections CRW and its consulting engineers will be able to make a final recommendation of the appropriate rehabilitation method. Design of the FSI – Phase 2 project is planned for 2020 with construction to occur in 2021 and 2022.

CRW is still working on a revised approach to rehabilitate and will prepare the corresponding schedule to the Paxton Creek and Front Street Interceptor Phase II Improvements upon selection of a rehabilitation method. We will not be able to determine the anticipated the duration of the delay until we complete the new evaluation in November 2019. We will continue to keep the Plaintiffs updated on the conclusions of our additional assessments, designs, and schedule for the remaining PCI and FSI Sewer Interceptor Improvements.

In reference to the explanation and description outlined above, CRW cites the severity of the condition of the interceptor system as arising from causes beyond our control and prevents the performance of the obligation under this Consent Decree. We have exercised our “best efforts to fulfill the obligation” and are continuing to take measures to prevent further delay to the greatest extent possible. The delay caused by these force majeure events will not cause or contribute to an endangerment to public health, welfare, or the environment. CRW has provided supporting documentation to the agencies as information has been available, and can provide supplemental information upon request if needed.



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Please contact me directly to discuss any questions or concerns you may have.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Charlotte A. Katzenmoyer".

Charlotte Katzenmoyer, CEO  
Capital Region Water

cc: Dave Stewart, P.E., BCEE, CRW  
Claire Maulhardt, P.L.A, CRW  
Fred Andes, Esq.  
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